is that it was not error to refuse to direct a verdict in favor of the defendant.

The falling of the wall occurred during a storm in which there was a high wind and lightning. There was evidence tending to prove that there was a stroke of lightning during the storm which caused or proximately contributed to the collapse of the wall. An exception was reserved to the part of the court's charge which dealt with this evidence. The purport of the instructions on this phase of the evidence was that if the overthrow of the wall was due to its being struck by lightning, the defendant was not liable for an injury so caused, if a reasonably prudent person would not have anticipated that the wall in the condition in which it was permitted to remain was liable to fall as a result of a stroke of lightning; but that the defendant was liable for such injury if a reasonably prudent person would have reasonably anticipated that lightning was so apt to strike the wall and cause it to fall that such person would not have permitted it to stand in the condition in which it was left. This amounted to saying that the owner of property should take precautions against dangers incident to such ordinary manifestations of the forces of nature as a reasonably prudent person would anticipate and guard against, but is not chargeable with negligence in failing to provide against a danger which a reasonably prudent person would not have anticipated or taken action to avoid. We are not of opinion that there is any just ground of complaint against the instruction in question. Certainly, it is not permissible for one to maintain a structure on his premises in such a condition that a reasonably prudent person would realize that it would become a source of danger to persons or property rightfully near by whenever an ordinary and reasonably to be anticipated force of nature might happen to come into play upon it."

Judgment—Action on Foreign Judgment—Conclusiveness of Adjudication.—In Chicago Life Ins. Co. *v.* Bertha R. Cherry, in the Supreme Court of the United States (May, 1917, 37 Sup. Ct. R. 492), it was held that the rendition of a judgment in favor of plaintiff in an action upon a judgment of a court of another state, over defendants' objection that the judgment sued upon was void for lack of valid service of process, does not take the property of defendants without due process of law, where the second judgment rests upon the view—right or wrong—that, as the issue of jurisdiction over the parties was raised and adjudicated after full hearing in the former case, it could not be reopened in the present suit. On this point the court, by Mr. Justice Holmes, said:

"This is a suit in Illinois upon a judgment recovered in Tennessee against the Insurance Companies, plaintiffs in error. They pleaded and set up at the trial that there was a valid service upon

them in Tennessee and that the judgment was void. The defendant in error (the plaintiff) showed in reply, without dispute, that the defense was urged in Tennessee by pleas in abatement; that, upon demurrer to one plea and upon issue joined on the other, the decision was for the plaintiff, and that the judgment was affirmed by the higher courts. The plaintiff had judgment at the trial in Illinois; the judgment was affirmed by the appellate court, and a writ of certiorari was denied by the Supreme Court of that state. The Insurance Companies say that the present judgment deprives them of their property without due process of law. Other sections of the constitution are referred to in the assignments of error, but they have no bearing upon the case.

The ground upon which the present judgment was sustained by the appellate court was that, as the issue of jurisdiction over the parties was raised and adjudicated after full hearing in the former case, it could not be reopened in this suit. The matter was thought to stand differently from a tacit assumption or mere declaration in the record that the court had jurisdiction.

A court that renders judgment against a defendant thereby tacitly asserts, if it does not do so expressly, that it has jurisdiction over that defendant. But it must be taken to be established that a court can not conclude all persons interested by its mere assertion of its own power (Thompson *v.* Whitman, 18 Wall. 457, 21 L. Ed. 897), even where its power depends upon a fact and it finds the fact (Tilt *v.* Kelsey, 207 U. S. 43, 51, 52 L. Ed. 95, 99, 28 Sup. Ct. Rep. 1). A divorce might be held void for want of jurisdiction, although the libelee had appeared in the cause (Andrews *v.* Andrews, 188 U. S. 14, 16, 17, 38, 47 L. Ed. 366, 367, 372, 23 Sup. Ct. Rep. 237). There is no doubt of the general proposition that, in a suit upon a judgment, the jurisdiction of the court rendering it over the person of the defendant may be inquired into (National Exchange Bank *v.* Wiley, 195 U. S. 257, 49 L. Ed. 184, 25 Sup. Ct. Rep. 70; Haddock *v.* Haddock, 201 U. S. 562, 573, 50 L. Ed. 867, 871, 26 Sup. Ct. Rep. 525, 5 Ann. Cas. 1). But when the power of the court in all other respects is established, what acts of the defendant shall be deemed a submission to its power is a matter upon which states may differ. If a statute should provide that filing a plea in abatement or taking the question to a higher court should have that effect, it could not be said to deny due process of law. The defendant would be free to rely upon his defense by letting judgment go by default (York *v.* Texas, 137 U. S. 15, 34 L. Ed. 604, 11 Sup. Ct. Rep. 9; Western Life Indemnity Co. *v.* Rupp, 235 U. S. 261, 272, 273, 59 L. Ed. 220, 224, 225, 35 Sup. Ct. Rep. 37). If, without a statute, a court should decide as we have supposed the statute to enact, it would infringe no rights under the Constitution of the United States. That a party has taken the question of jurisdiction to a higher court is bound by

its decision was held in Forsyth *v.* Hammond (166 U. S. 506, 517, 41 L. Ed. 1095, 1099, 17 Sup. Ct. Rep. 665). It cannot be otherwise when a court so decides as to proceedings in another state. It may be mistaken upon what to it is matter of fact, the law of the other state. But a mere mistake of that kind is not a denial of due process of law (Pennsylvania F. Ins. Co. *v.* Gold Issue Min. & Mill. Co., 243 U. S. 93, 96, ante, 344, 37 Sup. Ct. Rep. 344). Whenever a wrong judgment is entered against a defendant his property is taken when it sould not have been; but whatever the ground may be, if the mistake is not so gross as to be impossible in a rational administration of justice, it is no more than the imperfection of man, not a denial of constitutional rights. The decision of the Illinois courts, right or wrong, was not such a denial. If the Tennessee judgment had been declared void in Illinois, this court might have been called upon to decide whether it had been given due faith and credit (National Exchange Bank *v.* Wiley, 195 U. S. 257, 49 L. Ed. 184, 25 Sup. Ct. Rep. 70). But a decision upholding it upon the ground taken in the present case does not require us to review the Tennessee decision or to go further than we have gone."